

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CLIFFORD DEVINE,)	
)	
Plaintiff,)	
)	
v.)	CV 118-195
)	
UNITED STATES,)	
)	
Defendant.)	

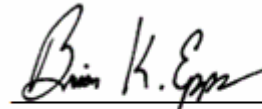
MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Plaintiff died on April 24, 2023. (Doc. no. 94.) When notified on May 4, 2023, the Court imposed a stay pending substitution of a successor or representative. (Doc. nos. 95-104.) On November 6, 21, and 23, 2023, Plaintiff’s four known heirs were served. (Doc. nos. 101, 103.) Two heirs decided they did not want to pursue this case. (Doc. no. 101-1.) On January 16, 2024, the parties filed a joint status report stating they knew of no other heirs or information about the administration of Plaintiff’s estate. (Doc. no. 104.) On February 28, 2024, the Court ordered the parties to show cause why the case should not be dismissed, (doc. no. 105), and during the March 6, 2024 status conference, counsel informed the Court they had no additional information about substitution or the administration of Plaintiff’s estate, (doc. nos. 106-07).

None of Plaintiff’s heirs have filed a motion for substitution, and the ninety-day deadline for doing so expired last month pursuant to Federal Rule of Civil Procedure 25(a)(1). See Fed. R. Civ. P. 25(a)(1); Escareno v. Carl Nolte Sohne GmbH & Co., 77 F.3d 407, 411 (11th Cir. 1996). This action, therefore, must be dismissed. Fed. R. Civ. P. 25(a)(1) (“If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.”); Escareno, 77 F.3d at 411 (“Rule 25(a) permits the court to

dismiss the case if a motion for substitution is not made within 90 days after death is suggested upon the record.”). Accordingly, the Court **REPORTS** and **RECOMMENDS** this case be **DISMISSED** without prejudice.

SO REPORTED and RECOMMENDED this 7th day of March, 2024, at Augusta, Georgia.

A handwritten signature in black ink, appearing to read "Brian K. Epps", is written over a horizontal line.

BRIAN K. EPPS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA